IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2179 OF 2003
IN
SUIT NO. 2325 OF 2003

Wardex Pharmaceuticals Pvt.Ltd., ..Plaintiffs.

Versus

Quest Laboratories Pvt.Ltd., ..Defendants.

Mr. M.A. Mahadgut for the plaintiffs.

None for the Defendants.

CORAM : S. J. VAZIFDAR, J.
DATED : 18TH NOVEMBER,2005.

P.C.:

1. This suit is filed to restrain the defendant from infringing the plaintiffs' trade mark and copyright and for passing off.

2. The plaintiffs are the registered owners of the trade mark "Grilinctus". The plaintiffs have applied for the said trade mark in respect of medicinal preparations.

3. The defendants have in respect of the same medicinal preparation used the trade mark "Tinilinctus". The two marks are phonetically and visually similar.

4. The plaintiffs are also the registered owners of the copyright in the label/ carton. The plaintiffs' carton comprises of a white background, a red line just inside the edge on the left side; the word '100 ml.' on the top left of the carton is followed by a blue band. Attached to the blue band is the narrower green band. Below the same on the white background appears the plaintiffs' trade mark. Below the same appear the words " ANTI -ALLERGIC NON-NARCOTIC COUGH SUPPRESSANT". Below it appear again blue and green bands. Below the green band the name and address of the plaintiffs is shown.

5. The front face of the defendants label in the carton is deceptively similar to that of the plaintiffs. The differences are insignificant. For instance in the place of the green band a lighter blue band has been used. The narrower band of the darker blue band appears below the lighter blue band. Further the figure '100ml' appears in the border of the blue band in the defendants label. These differences to my mind are merely with a view to suggest that the defendants label is not an imitation of the plaintiffs' label. There is a breach of the plaintiffs copyright. Even the shapes and size of the

bottles are identical.

6. In the circumstances, notice of motion is made absolute in terms of prayer clauses (a),(b),(c).

7. Prayer clasue (d) is not pressed for.

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